

Before the  
**Federal Communications Commission**  
Washington, DC 20554

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	CG Docket No. 02-278
	)	
Petition of Network Communications	)	
International Corp. For Expedited Declaratory	)	
Ruling That Network Communications	)	
International Corp.'s Inmate Calling Services	)	
Protocol Does Not Violate the TCPA	)	

**MOTION TO STRIKE OR, IN THE ALTERNATIVE, REQUEST FOR LEAVE TO FILE  
RESPONSE**

Network Communication International Corp. (“NCIC”) respectfully requests that the Federal Communications Commission (“Commission”) strike the purported “Reply Comments”<sup>1</sup> filed by Gerald Roylance, or in the alternative, accept this response. Mr. Roylance’s filing is actually an opposition to NCIC’s Petition for Expedited Declaratory Ruling (“Petition”)<sup>2</sup> that was filed after the established Commission deadline for initial comments. In addition, the filing, which raises new arguments, was filed on the last day of the reply comment filing period, and did not give NCIC an opportunity to respond.

**I. Mr. Roylance’s Untimely Filing Should be Stricken from the Record.**

On May 10, 2016, NCIC filed the Petition to confirm that it could utilize a single follow-up text message protocol for unsuccessful collect calls initiated by individuals through NCIC’s network. On June 7, 2016, the Commission released a Public Notice that sought comment on the Petition. The Public Notice established an initial comment deadline of July 7, 2016, and a reply comment deadline of July 22, 2016. No comments were filed during the initial comment period, and only Mr. Roylance filed during the reply comment period.

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<sup>1</sup> Reply Comments of Gerald Roylance, CG Docket No. 02-278 (filed July 22, 2016) (“Roylance Reply”).

<sup>2</sup> NCIC Petition for Declaratory Ruling, CG Docket No. 02-278 (filed May 10, 2016).

Per the Public Notice, the pleading cycle in this proceeding is governed by Sections 1.415 and 1.419 of the Commission's Rules. Under Section 1.415(c), "[r]eply comments are designed to provide a reasonable time to respond to issues raised in *original* comments."<sup>3</sup> The Commission has stricken arguments that violate this principle.<sup>4</sup>

Mr. Roylance's filing violates Section 1.415(c). Other than Mr. Roylance's filing, no comments were filed. Consequently, Mr. Roylance's filing cannot be considered reply comments because his arguments do not "respond to issues raised in original comments."<sup>5</sup> Instead, his filing is actually an opposition that raises new arguments and should have been filed during the initial comment period. Mr. Roylance offers no explanation for his improper filing nor does he seek Commission leave to make the filing. Indeed, Mr. Roylance is quite familiar with the Commission's procedural rules; he has filed at least 39 comments, 26 reply comments, and one opposition in this docket alone since 2004.<sup>6</sup> Thus, Mr. Roylance is not a newcomer to Commission procedures who might otherwise be afforded leniency. There is no public benefit from allowing Mr. Roylance's untimely filing and, on the contrary, permitting the filing to remain in the record "would encourage the filing of additional untimely pleadings without any offsetting public benefits."<sup>7</sup> Accordingly, Mr. Roylance's attempted end-run of Commission procedures should result in his filing here being stricken from the record.

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<sup>3</sup> *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Chattanooga Tennessee)*, Report and Order, DA 01-381, MM Docket No. 99-268, RM-9691 at 2 (2001) (emphasis added) ("Chattanooga") (dismissing reply comments that did not respond to issues raised in initial comments and that "should have [been] filed . . . during the initial comment cycle" as untimely under Section 1.415(c)).

<sup>4</sup> *Id.* (stating that acceptance of the untimely reply comments in question "would disserve the public interest and would encourage the filing of additional untimely pleadings without any offsetting public benefits."); *Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems*, Second Report and Order, FCC 08-208, WT Docket No. 04-344 ¶ 9 n.36 (2008) (dismissing reply comments that did "not address any of the issues raised in the initial comments" as untimely under Section 1.415(c)).

<sup>5</sup> Chattanooga at 2.

<sup>6</sup> See, e.g., Opposition of Gerald Roylance to Global Tel\*Link's Petition for Expedited Clarification and Declaratory Ruling, CG Docket No. 02-278 (filed March 12, 2010); Reply Comments of Gerald Roylance re Todd Bank's Petition for Declaratory Ruling, CG Docket No. 02-278 (filed March 31, 2016); Comments of Gerald Roylance re Vincent Lucas' Petition for Declaratory Ruling, CG Docket No. 02-278 (filed June 20, 2014).

<sup>7</sup> *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Chattanooga Tennessee)*, Report and Order, DA 01-381, MM Docket No. 99-268, RM-9691 at 2 (2001).

If Mr. Roylance's filing is not stricken, NCIC requests that its substantive response (below) be authorized by the Commission pursuant to Section 1.415(d) of the Commission's Rules.<sup>8</sup> Good cause exists to permit a response as NCIC would otherwise be prejudiced by Mr. Roylance's filing because it raises new arguments and it was filed on the last day of the reply comment filing period, foreclosing NCIC an opportunity to respond. At a minimum, NCIC should be provided such an opportunity.

## **NCIC's RESPONSE TO REPLY COMMENTS OF GERALD ROYLANCE**

- II. Mr. Roylance's Arguments Are Without Merit Because They Are and Improper Request for Reconsideration of the Commission's Order on the GTL Petition and Because they Inaccurately Characterize NCIC's Request.**
- A. Mr. Roylance is Opposing NCIC's Petition only to Seek Untimely Reconsideration of the Commission's Declaratory Ruling and Order in Another Matter.**

Mr. Roylance improperly attempts to oppose NCIC's Petition by subverting the comment process in this matter to undermine the Commission's prior ruling: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, et al., CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015), at 7984-89, ¶¶ 38-46 [hereinafter "GTL Decision"]. Mr. Roylance's argument can be boiled down to the following claim: that the Commission incorrectly decided the GTL Decision, which in relevant part, expressly provided that an inmate calling service ("ICS") could implement a protocol whereby a called party is contacted with as many as three follow-up, prerecorded phone calls.

Mr. Roylance's argument is improper for reasons including, but not limited to the fact that the appropriate remedy for challenging the GTL Decision, which was adopted by the Commission June 18, 2015 and released July 10, 2015, was to either file a timely petition for reconsideration with the Commission and/or a timely appeal in federal appellate court. *See* 47

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<sup>8</sup> Section 1.415(d) provides that an interested party may file additional comments only if "specifically requested or authorized by the Commission." 47 C.F.R. § 1.415(d).

U.S.C.A. §§ 405, 402(a); 28 U.S.C. § 2342-2344; 47 C.F.R. § 1.429. Instead, Mr. Roylance improperly attempts to achieve these ends through the comment process in the present NCIC matter. Mr. Roylance's collateral attack on the Commission's prior ruling is non-justiciable and NCIC respectfully requests the Commission reject Mr. Roylance's argument.

**B. NCIC's Follow-up Protocol is Wholly Consistent with the GTL Decision and does not Create Privacy Issues.**

Mr. Roylance is incorrect that NCIC's proposed follow-up protocol raises privacy issues. The Commission has previously ruled in the GTL Decision that a special exemption exists for inmate calling service ("ICS") providers with regard to follow-up protocols and this special exemption properly protects consumers' privacy interests.<sup>9</sup>

As stated more fully in NCIC's Petition,<sup>10</sup> NCIC's follow-up protocol would strictly comply with the Commission's conditions set forth in the GTL Decision, which the Commission found appropriate in light of consumer privacy interests, noting correctly that it is the inmate who serves as the genesis (and thus initiator) for this calling protocol. The Commission has identified clear and achievable standards for the exemption defined in the GTL Decision. NCIC's follow-up text messaging protocol meets and betters those standards: NCIC's text messages would identify NCIC; the text messages would not contain telemarketing, solicitation, debt collection, or advertising content; NCIC would send one text message, which is less than the three notifications for each inmate call permitted in the GTL Decision; and NCIC would employ a sufficient opt-out procedure, should a called party choose to opt-out from receiving future calls/texts from a particular inmate. Moreover, after the single follow-up text message is sent, NCIC would not retain the called party's number. NCIC's notifications would also be clear and concise—the message would be brief and worded so that a called party could easily read it within one minute. Accordingly, given that NCIC's proposed follow-up protocol would

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<sup>9</sup> GTL Decision, at 7989, ¶ 46.

<sup>10</sup> See NCIC Petition, at 4-8.

expressly follow the conditions set forth in the GTL Decision, Mr. Roylance's argument that NCIC's Petition raises privacy issues should be rejected out of hand.

**C. NCIC's Follow-up Protocol Promotes Efficiency and Benefits Service Quality.**

Mr. Roylance is also incorrect with his baseless assertions implying that ICS providers can easily employ alternative means for achieving a follow-up protocol by sending a letter or making non-automated calls to ICS recipients with cellular phones.<sup>11 12</sup> Again, this argument was previously adjudicated in the GTL Decision, which Mr. Roylance has not challenged, and should not be re-litigated here. In the GTL Decision, the Commission expressly recognized certain important policy objectives specific to the particular challenges and legal constraints present in the ICS marketplace. Specifically, the Commission noted that ICS follow-up protocols "ensure inmate calls can be completed in a timely manner."<sup>13</sup>

As stated more fully in NCIC's Petition,<sup>14</sup> on average, NCIC facilitates hundreds of thousands of ICS calls per day. In light of the magnitude of NCIC's operations, coupled with NCIC's duty to ensure inmate calls can be completed in a timely manner due to the restrictions imposed by correctional facilities' rules that establish the time and manner in which inmates may use phone services and other forms of communication, Mr. Roylance's proposed alternative means of communication are ineffective and unfeasible. While GTL has employed an up-to-three follow-up call protocol, NCIC has determined that for its own operations a text message follow-up protocol is most efficient and best promotes the policies that the Commission recognizes are unique to the ICS marketplace. Moreover, it promotes reliable services and provides substantial value to inmates, their families, friends, and legal counsel using NCIC's

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<sup>11</sup> See Roylance Reply, at 3.

<sup>12</sup> NCIC, like all ICS providers, operate in a field with a multiplicity of rules imposed by each particular correctional facility as well as state and federal regulations including those such as ICS rate caps. See <https://www.fcc.gov/consumers/guides/inmate-telephone-service>. Mr. Roylance's implication that ICS operators have access to unlimited resources because they purportedly charge exorbitant rates is misguided and incorrect.

<sup>13</sup> GTL Decision, at 7988, ¶ 44.

<sup>14</sup> See NCIC Petition, at 8-11.

services. As stated in NCIC’s Petition, NCIC’s automated text message is not the type of robocall the TCPA seeks to prevent, but is part of the service NCIC is expected to provide in pursuit of its contractual obligations to correctional facilities and its responsibilities to the public.<sup>15</sup> It is exactly the kind of service expressly permitted by the Commission in the GTL Decision.

## CONCLUSION

NCIC respectfully requests that the Commission strike the purported “Reply Comments” filed by Mr. Roylance, or in the alternative, accept the foregoing reply.

Respectfully submitted,

**Network Communications International Corp.**

By: \_\_\_\_\_/s/\_\_\_\_\_  
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<sup>15</sup> NCIC Petition, at 10-11.